

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8703 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
  2. To be referred to the Reporter or not? Yes
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No
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MIPCO SEAMLESS RINGS(GUJ) LTD

Versus

INDUSTRIES COMMISSIONER

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Appearance:

MR RD PATHAK for Petitioners

MR KAMAL MEHTA for MR MG DOSHIT for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3

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CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 09/04/99

ORAL JUDGEMENT (per A.R. Dave, J.)

The petitioner-company has approached this Court with a grievance that it has been wrongly denied certain benefits under the provisions of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act") though

it is very much entitled to the same. The petitioner has also challenged recovery proceedings initiated by respondent No. 2 whereby, the Government authorities have sought to recover the amount of sales tax from the petitioner company which has been referred to in Annexure A-13(1) annexed to the petition. Though the petitioner has challenged validity of sec. 47(4) of the Act in the petition, the learned advocate appearing for the petitioner has fairly submitted that the petitioner would not like to challenge validity of the said section.

2. The facts in a nutshell giving rise to the present petition are as under:-

3. So as to see that certain underdeveloped areas of the State of Gujarat are developed and industries are established in such underdeveloped areas, the State of Gujarat, respondent No.3 herein, has framed several policies so as to attract industrialists to establish their new industrial units in such areas. So as to encourage new industrial units to establish their manufacturing units in such areas, the State of Gujarat gives benefit under the Act either by way of deferment of payment of sales tax or exemptions from payment of sales tax. Such benefits are also given to industrial units already established in such areas if they enhance their production beyond certain limit or start manufacturing something different by way of diversification. According to the petitioner, it is entitled to benefit under one of such schemes framed by the respondent government under the provisions of sec. 49(2) of the Act. From time to time, the respondent Government has issued notifications giving details of such schemes framed by it and one such notification has also been issued on 6.5.1986, a copy of which is annexed and marked Annexure 1 to the affidavit-in-reply. Reading the said notification with the relevant provisions of the Act and other relevant resolutions including G.R. dated 27.8.1980 it appears that if a new industrial unit which commences commercial production during the operative period of the scheme, the industrial unit becomes entitled to certain exemption from payment of sales tax provided the new industrial unit has fulfilled all the conditions incorporated in the relevant Government Resolutions.

3. It is the case of the petitioner company that the petitioner had started manufacturing rolled rings. While starting manufacture of rolled rings, the petitioner company had fulfilled all the conditions for getting exemption from payment of sales tax as prescribed under the Government Resolution dated 27.8.80. Upon certain

conditions, the petitioner company was exempted from payment of sales tax as specified in the eligibility certificate dated 5.10.82 whereby the company was exempted from making payment of sales tax to the tune of Rs. 50 lakhs in respect of manufacture of rolled rings as specified in the eligibility certificate dated 5.10.82 during the period commencing from 19th April 1982 to 18th April 1989. The eligibility certificate given to the company with regard to the above referred exemption was subsequently modified so as to enable the petitioner company to get benefit to the tune of Rs. 80 lakhs. Having commenced manufacturing rolled rings, the petitioner company wanted to avail further exemption under the scheme by manufacturing another type of ring named "forged rings". For the said purpose it was necessary for the company to import a new machinery and by the said diversification the company was to start manufacturing 'forged rings' which were little different from the rolled rings which were being manufactured by the company.

5. The petitioner company had given an application for getting eligibility certificate for being exempted from payment of sales tax under the Act in respect of manufacture of forged rings which was by way of diversification under the scheme. It is the case of the petitioner company that for the purpose of manufacturing forged rings, the petitioner company had obtained necessary licence dt. 28.2.83 from the Department of Industrial Development of the Govt. of India. It has been specifically stated by the company that for the purpose of manufacturing rolled rings the company had already obtained licence from the aforesaid Department of the Govt. of India on 28.11.1980. The copies of relevant licences are annexed and marked as Annexure 3 & Annexure 2 respectively to the affidavit-in-reply filed on behalf of respondent No. 1. The said two licences clearly reveal that the products manufactured by the company were different and only due to the said fact the company was required to obtain another licence when the company wanted to start manufacturing forged rings.

6. As per the provisions of the scheme, the petitioner company was supposed to get an eligibility certificate from respondent No.1 and on the strength of the eligibility certificate, respondent No.2 was to furnish an exemption certificate so as to avail an exemption from payment of sales tax under the Act.

7. Certain relevant undisputed facts with regard to investment of the company are as under. For the purpose

of manufacturing rolled rings the company had invested Rs. 3,60,53,337 for the purpose of purchase of machineries, land and building whereas for the purchase of new machinery for manufacturing forged rings, the company had spent approximately Rs. 1.10 crores.

8. When the petitioner company had submitted its application for obtaining eligibility certificate to respondent No.1, respondent No.1 refused to grant eligibility certificate on the ground that in fact there was no diversification for the reason that there was no difference between rolled rings and forged rings. In support of the said refusal it has been stated in the affidavit-in-reply filed by respondent No. 1 that an expert had visited the factory premises of the petitioner company and the expert had opined that there was no difference between rolled rings and forged rings and therefore it was not a case of diversification.

9. Learned Advocate Shri Kamal Mehta appearing for the respondents has tried to justify the stand of respondent No.1 by submitting that in fact there was no difference in rolled rings and forged rings and therefore the petitioner company was not entitled to any exemption much less the eligibility certificate from respondent No. 1.

10. In support of the petitioner's case learned advocate Shri Pathak has vehemently submitted that the stand taken by respondent No.1 is absolutely unjust, illegal and improper for the simple reason that rolled rings and forged rings are different products. After having started manufacturing rolled rings, the petitioner company had thought of diversification and in pursuance of the said idea it had started manufacturing forged rings. For the purpose of manufacture of forged rings, it was necessary for the petitioner company to obtain a separate licence from the Department of Industrial Development of the Govt. of India because without such a licence, it was not open to the petitioner company to manufacture forged rings. Upon perusal of the said licences it is very clear that the licensing authority namely the Department of Industrial Development of the Ministry of Industry, Govt. of India, has permitted the petitioner company to manufacture 7 Million rolled rings by virtue of licence dated 28.11.80 and 25 Million forged rings by virtue of another licence dated 28.2.83.

11. We see much substance in the contention of the learned advocate for the petitioner. Had the product

been one, it would not have been necessary for the petitioner company to approach the Government of India in the Ministry of Industry with a request to issue another licence for manufacture of forged rings. The fact that the petitioner company had to approach the Ministry of Industry for obtaining another licence to manufacture forged rings and licence dated 28.2.83 was issued to the petitioner company for manufacturing 25 million forged rings clearly denote that rolled rings and forged rings are different products.

12. The petitioner company has also placed on record certain details with regard to manufacture of rolled rings and forged rings manufactured by it during the period commencing from 1982 to 1998. Ld. Advocate Shri Kamal Mehta appearing for the respondents has not objected to production of the said figures on record. Upon perusal of the said figures, the following facts emerge.

Year Production of Total			
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	Rolled	Forged	
	Rings	Rings	
1982-83	732229	-	732229
1983-84	1031900	-	1031900
1984-85	978827	-	978827
1985-86	1558525	-	1558525
1986-87	1325942	-	1325942
1987-88	1512229	1404521	2916750
1988-89	1617089	2091325	3708414
1989-90	1273811	1826060	3099871
1990-91	1231940	1808276	3040216
1991-92	1558776	2012289	3571065
1992-93	1357002	1575186	2932188
1993-94	1698545	1703844	3402389
1994-95	1386023	1497643	2883666
1995-96	1279481	-	1279481
1996-97	1175763	-	1175763
1997-98	725380	-	725380
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	20443462	13919144	34362606
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After getting necessary licence to manufacture forged rings, the petitioner company started manufacturing forged rings from the year 1987-88. Upon perusal of the figures stated hereinabove and the licenced capacity to manufacture rolled and forged rings, it is clear that the petitioner company had not attained maximum production of rolled rings. Though the company was having capacity to

manufacture 7 million rolled rings, the company had manufactured only 15,12,229 in 1987-88 and the company had manufactured 14,04,521 forged rings in the same year. Had rolled and forged rings been the same products, the petitioner company would not have spent a substantial amount of Rs. 1.10 crores for importing another machinery for manufacturing forged rings. Similarly, for subsequent years, the company had manufactured much less rolled rings than its optimum or licensed capacity and had also manufactured forged rings in addition to rolled rings during the said period. The above referred figures also support the contention of the petitioner that both the rings are different.

13. Upon perusal of the affidavit-in-rejoinder filed on behalf of the petitioner company, it is clear that strength of rolled and forged rings are absolutely different. Raw material used in both the rings are also different. Moreover, machinery used for manufacturing rolled and forged rings are different. The said facts have not been controverted either by filing an affidavit or even by oral submissions by learned advocate Shri Kamal Mehta. Ld. Advocate Shri Mehta appearing for the respondents has only relied upon the affidavit filed on behalf of respondent No.1 stating the fact that an expert had visited the premises where forged rings were being manufactured and the expert was of the view that the forged rings and rolled rings were not different. At an earlier occasion this Court had called for the relevant files to see the report of the expert. Upon perusal of the files, it appears that the following note was made by the expert.

"I had visited the unit. In the existing unit they manufacture Ball Bearing inner and outer races. In the additional capacity set up also they manufacture inner and outer races. Both the products are same. It is not a case of diversification."

So as to support the above-referred observation or finding, the Technical Adviser (Engineering) has not relied upon any material or has not placed on record anything. Looking to the above-stated report not supported by any material or any reasoning, we are not inclined to believe the said report. Normally whenever any expert gives his opinion, his opinion would always be supported by some reasoning. Ld. Advocate Shri Mehta appearing for the respondents was also given some time to show how the rolled and forged rings were considered same in spite of a fact that as per the pleadings, both the

products were different. He was also given an opportunity to state the basis on which the above referred remark was made by the technical expert but he frankly conceded that there was nothing on record to show that the Technical Adviser had any reason to make above referred statement. Moreover, he could not place any material on record to show that both the products were not different though sufficient time was given to him. In view of the above referred statement not supported by any material and in view of a specific averments made on behalf of the petitioner company that strength of both the rings and machineries and raw material used for manufacturing both the rings are absolutely different, we are inclined to believe that rolled rings and forged rings cannot be said to be the same products.

14. The term "diversification" has been defined in Government Resolution dated 6.5.1986 as under:

"Diversification" means launching of new product line under the same company, firm or partnership provided the total fixed capital investment in such a diversification exceeds at least 25% of the value of the net fixed assets of the original project."

In the instant case, first of all, the petitioner company started manufacturing rolled rings as stated hereinabove under licence dated 28.11.80 from the Department of Industrial Development of the Govt. of India. After some time, the petitioner company imported another machine worth Rs. 1.10 crores so as to enable the petitioner company to start manufacturing forged rings. For the said purpose the petitioner company had to again approach the abovenamed department of the Govt. of India for obtaining another licence as forged rings are considered different by the said department of the Govt. of India. It is definitely not a case of expansion for the reason that rolled rings and forged rings are different products. Moreover, the petitioner company had not reached the optimum level of production of rolled rings and therefore it was not necessary for the petitioner company to buy another machine for manufacturing rolled rings. The fact that the petitioner company spent a sum of Rs. 1.10 crores for purchasing a new machine and obtained another licence clearly denotes that the petitioner company wanted to launch a new product by manufacturing forged rings. Had it been a case of expansion, the petitioner company would have increased its capital investment by not less than 25% of the fixed assets of the existing project and would have

increased its production to the extent of 25% of its original installed capacity. In the instant case, the petitioner company had never reached the installed capacity and therefore this is not a case of expansion. At one point of time it was suggested by learned advocate Shri Kamal Mehta appearing for the respondents that the petitioner was claiming the exemption on the ground that there was an 'expansion' by the petitioner company. In view of the above facts, the said submission of Shri Mehta is not at all well-founded. Moreover, the petitioner never claimed any benefit on account of expansion of its project because in fact the petitioner company wanted to launch a new product named forged rings and thereby it wanted a benefit under the Act on the ground of diversification.

15. Looking to the term "diversification", a unit should start a new productline under the same company, firm or partnership and investment in new fixed capital for such a diversification should exceed 25% of the value of the net fixed assets of the original project. It is not in dispute that the petitioner company had launched a new productline for manufacturing forged rings and had also spent a further sum exceeding 25% of the value of the net fixed assets of the original project because in the original project the petitioner company had invested approximately Rs. 3.6 crores whereas for the purpose of diversification the company had purchased machineries worth Rs. 1.10 crores and thereby had increased its total fixed capital investment by more than 25% of the value of the net fixed assets of the original project.

16. Learned Advocate Shri Kamal Mehta has mainly relied upon the report of the technical expert saying that forged rings and rolled rings are the same products. With reluctance we are constrained to observe that the report submitted by the technical expert is not at all acceptable. Except for the fact that rolled rings and forged rings are the same products and that the expert ascertained the said fact after visit of the factory premises, nothing more has been said by the expert. His opinion has not been supported by any material. He has not made any note to support his opinion. Normally, whenever any expert gives his opinion or report, especially when such a report or opinion is likely to affect a citizen's right to get some benefit from the State, the report or opinion must be supported by some reasons or the expert must record the reasons in his office file so that the reasons can be examined by the superior technical or executive authority or by the court of law. Even learned advocate Shri Kamal Mehta could not



deny the fact that nothing was said by the respondent authorities in reply to clear averments made by the petitioner company that raw materials used for manufacture of rolled rings and forged rings were absolutely different and strength of both the rings were also different. A new machine had to be purchased for the purpose of manufacturing forged rings. Had the product been the same, the petitioner company would not have spent a substantial sum of Rs. 1.10 crores for buying a new machinery especially when it was not manufacturing rolled rings at its optimum level. Even if we look at the sum total of rolled rings and forged rings manufactured by the petitioner company in any year, the total production also is not exceeding optimum capacity of the original project or plant installed by the petitioner. This fact clearly reveals that rolled rings and forged rings are different.

16. Normally this Court would not decide any disputed question of fact. In the instant case, as per submission made by the petitioner company, rolled rings and forged rings are different products, whereas, on the other hand, it has been submitted by the respondents that there is no difference between the rings referred to hereinabove. Looking to the pleadings and peculiar facts and circumstances of the case, we are inclined to come to the conclusion that rolled rings and forged rings are different and in the instant case, there is a diversification as the petitioner company has launched a new product line and therefore the petitioner company is entitled to eligibility certificate from respondent No. 1.

17. In normal circumstances, this Court would have asked respondent No. 1 to reconsider the decision in the light of the observations made hereinabove and on the basis of the facts submitted by the petitioner company, but we do not think it proper to adopt such a course for the simple reason that the present petition was filed somewhere in 1989. The petitioner has already paid sales tax as it was not getting the benefit under the scheme referred to hereinabove. As the facts are very clear, we do not think it proper to remand the matter but it would be in the fitness of things to direct respondent No.1 to grant eligibility certificate as prayed for by the petitioner company so as to enable the petitioner company to get the advantage of exemption on the basis of the said eligibility certificate by approaching respondent No.2 or any other authority thereafter for getting the actual benefit under the scheme.

18. In the circumstances, we direct respondent No.1 to furnish necessary eligibility certificate to the petitioner company within a period of three weeks from the date of receipt of the writ by respondent No.1. It is hoped that respondent No.2 or any other appropriate authority under respondent No.3, who is to give final benefit to the petitioner company, in pursuance of the scheme referred to hereinabove, shall consider the fact that substantial delay has been caused in the instant case and shall try to expedite the matter by giving benefit to the petitioner company as soon as possible in accordance with law.

19. It is pertinent to note that the petitioner company and other similarly situated manufacturing units might have initiated their business activities in the underdeveloped areas of the State of Gujarat so as to enable themselves to take some benefit under different schemes framed by the Govt. of Gujarat and thereby they might have given valuable aid and assistance to the state in the matter of its development. Such units, which have spent substantial amount and have taken risk of establishing their industries in underdeveloped areas should not be put to difficulties by the State or its officers and the State should see that the schemes framed by it are implemented in its true spirit so that in future whenever such schemes are framed, more and more industrial units take due advantage of the scheme so as to enable the State to develop its underdeveloped areas.

20. In view of the above referred direction, the petition is finally disposed of as allowed. Rule is made absolute with no order as to costs.

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